

# The COVID-19 Response and the Right to a Healthy Environment in India

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With the plight of the worldwide pandemic the need for humanity to protect the environment and maintain ecological balance became more apparent. While India's lockdown led to reduced anthropogenic interference and provided nature with a momentary healing period, it is significant to highlight whether the actions taken during the pandemic have mitigated or aggravated environmental problems. By fragmenting the two issues – response to the pandemic and environmental protection –, India may have missed out to see them as two sides of the same coin: Fighting against COVID-19 left behind the long-standing battle to save the planet. One powerful tool that will help make the earth liveable is to argue for a human right to a healthy environment in courts. What challenges has the right to live in a healthy environment faced in India amidst the pandemic? In light of the Indian government's various actions during the COVID-19 pandemic, we seek to reflect upon the nature of the essential environmental cases filed to protect this new human right and the response received from courts.

## Status of the Right to a Healthy Environment in India

Briefly casting back to history, in 1988, [\*Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh\*](#) was the first case in India involving issues relating to the environment and ecological balance. In this case, where limestone quarries caused adverse impacts on the residents of the Himalayan Mussorie Hill range and their welfare, the Supreme Court took account of both the country's development and environmental conservation. Reconciling the two more extensive interests of the country, the Court ordered for shutting down the quarries to protect and safeguard the right of the people to live in a healthy environment with minimal disturbance of ecological balance.

In this context, [\*Maneka Gandhi v. Union of India\*](#) was a herald for liberally interpreting the right to life under Article 21 of [the Indian Constitution](#), giving shape to the inclusion of a right to a healthy environment within its ambit. Later cases emphasised living a meaningful life, including [living in a pollution-free, healthy, clean and sustainable environment](#). Therefore, the right to a healthy environment developed as a [constitutionally protected fundamental right](#) of human beings within the right to life under Article 21 of the Constitution. In addition to attaining a human right status, it also invited duties on the Directive Principles of State Policy of India (Article 48A), which are fundamental in the country's governance, and on every citizen (Article 51A(g)) to protect and improve the environment. In furtherance, we attempt to highlight the specific measures taken to ensure a healthy and hygienic environment during the COVID-19 crisis by a few selected decisions rendered then.

## The Ban on Firecrackers

India celebrates Diwali, an annual festival of lights involving massive use of firecrackers. The Indian government [noted](#) that air pollution could increase the virus' survival duration, the severity of the disease and further impact vulnerable groups. Ahead of the festive season beginning after mid-October, the National Green Tribunal (NGT), the country's environmental court, [imposed](#) a ban on the sale and use of firecrackers in the interest of public health and the environment, foreseeing the aggravated menace of the pandemic. Distinct from the [previous ban](#), the 2020 ban was more restrictive by reducing the number of bursting hours and widening the scope to the whole country, further conditioning legal action in case of violation.

Protecting the right to a clean and pollution-free environment, in [Tribunal on its own Motion v. Ministry of Environment, Forest and Climate Change & Others](#), the firecracker ban was ordered from November 2020 to cities with air quality under the 'poor and above' category. The ban in the capital Delhi was absolute due to the pre-existing pollution crisis and rising number of COVID-19 cases. In cities categorised under the "moderately polluted" 'air quality, the NGT restricted the use of firecrackers to only green crackers and for a duration of up to two hours during festivities. The ban was further [extended](#) by the NGT until there was an improvement in the COVID-19 situation. This ban gave rise to a legal challenge in [Ram Babu Dusad & Others v. State of Rajasthan](#) by fireworks dealers as violating their constitutional right to practice any profession and carry on any trade or business. Nonetheless, the High Court clearly stated that the right to life stands on a higher pedestal than the right to practice any profession and carry on trade. It held that the State was well within its constitutional rights to impose reasonable restrictions under Article 19(6) of the Constitution (para. 10). Though the right to a healthy environment was not specifically mentioned in the judgment, its inclusion within the right to life to upgrade the air quality is remarkable.

## **Ensuring the Safe Disposal of COVID-19 Waste**

Before the outbreak of the COVID-19 pandemic, the [2016 Bio-Medical Waste Management Rules \(BMW Rules\)](#) regulated bio-medical waste disposal in an environmentally sound manner. The NGT, *suo moto* in [Re: Scientific Disposal of Bio-Medical Waste arising out of COVID-19 treatment- Compliance of BMW Rules, 2016](#), considered the need for revision of the [Guidelines for Handling, Treatment and Disposal of Waste Generated during Treatment/ Diagnosis/ Quarantine of COVID-19 Patients](#) issued by the Central Pollution Control Board. This was necessary to ensure compliance with the BMW Rules, as applicable to the disposal of bio-medical waste from COVID-19. Since the unscientific handling of sewage and other liquid waste poses hazards to the environment and public health, the NGT directed taking precautions at the organisational level by forming a high-level task force. Various Indian States also made [spitting in public a punishable offence with a monetary fine](#). At the individual level, the NGT directed the designated nodal officers to train the waste handlers relating to prevention measures and to demonstrate videos via media for citizens to create awareness. The steps to be taken for scientific disposal included continued proper segregation of wastes, supervision and monitoring, online data compilation, use of electronic or digital manifest and tracking system

for COVID-19 waste. The NGT also followed up with compliance with the updated guidelines.

### **Too Little to Address too Big Environmental Problems**

The human right to a healthy environment was indirectly protected through the umbrella right to life, in the firecrackers ban and disposal of bio-medical waste cases. Notwithstanding, it would be an understatement to say that the right to a healthy environment was well protected by the active role of Indian courts during COVID-19. Despite [nature's clear message](#) that anthropogenic interference has been harming the world, to our detriment, the Ministry of Environment, Forest and Climate Change [amended](#) the Environmental Impact Assessment (EIA) Notification 2006 on 27 March 2020, which resulted in [endangering the right to live in a healthy environment](#): On account of the health crisis, all projects or activities related to bulk drugs and intermediates, manufactured for addressing multiple ailments, have been re-categorised by the amendment. Consequently, these were exempted from the requirement to collect baseline data, EIA Studies, and public consultation. Such exemptions, mainly whittling public participation, could [raise repercussions on human's sustainable environment](#).

Environmental protection was further hindered by the increasing dependence on single-use plastics during the pandemic. The Indian government had planned to [phase out single-use plastic by 2022](#). Various [States had already](#) implemented the ban on single-use plastics from 2019. Nevertheless, the paranoia towards contracting the virus forced the State Governments to [relax their norms](#), even as there was [no scientific proof](#) that single-use plastics were safer than cloth or paper. Regardless, [the surge](#) of single-use plastics caused further environmental harm during the pandemic. Government officials admitted that [they do not have the resources to tackle the issue as long as they were facing a more considerable challenge](#), though a [future ban](#) is expected to be implemented from 1 January 2022. Therefore, COVID-19 delayed the struggle led by the right to a healthy environment to achieve climate and environmental goals.

### **Conclusion**

We have highlighted a few challenges relating to the right to a healthy environment in India during the COVID-19 pandemic. This new human right unifies the human interest to live a dignified life while safeguarding environmental assets. India's recognition of the right to a healthy environment as part of the constitutional right to life is indispensable. In particular, this blended right helped in preventing at least some environmental harm during the pandemic. However, protecting the environment in a standalone human right will not be enough. What needs to be protected could better be described from the optimal and meaningful utilisation of nature's resources for the country's sustainable development and individual needs. Simultaneously, the environmental regulators' decisions during emergencies, like the current pandemic, should be mindful of the threats to nature. For furthering this integrated right under Article 21 of the Indian Constitution, a growth-centred approach in the development of the economy must account for ecological balance. In this context, as a driven organ for directing environmental norms, the Indian courts

ought to vividly process environmental cases to preserve nature, and to ultimately guarantee the prolonged survival of humans on the earth. Understanding that a stable ecosystem with minimal human intervention ultimately saves lives of all living creatures is indispensable for human beings' survival.

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